**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL ST.NO.11283 OF 2007.**

The State of Maharashtra,
(through the Special Land
Acquisition Officer, Metro
Centre No.2, Panvel,
Dist. Raigad.). ... Appellant.

Versus.

1, Dilip Gopal Naik.
2. Shri Pritam Gopal Naik.
3. Kum.Nisha Gopal Naik.
4. Kum.Chaya Gopal Naik.
5. Kum.Dhanwanti Gopal Naik.
6. Smt.Jijabai gopal Naik.
7. Shri Bharkar Pilaji Patil.
8. Sau.Leelabai Gopal Naik.
   All Adults, R/o. Bamandongri,
   Tal.Panvel, Dist.Raigad,
   For Nos.2 to 8 P/A. Holder
   Shri Dilip Gopal Naik. ... Respondents.

Shri B.H.Mehta, A.G.P. for the Appellant.

Shri S.V.Gavand for the Respondents.

**CORAM : ABHAY S.OKA, J.**

**DATED : 26th October, 2007.**

**ORAL JUDGMENT.:**

1. Admit. The Advocate for the Respondents waives service. By consent, the Appeal is forthwith taken up for final hearing. The learned Advocate for the Respondents stated that the Respondents do not desire to prefer any Appeal against the impugned Judgment and Award and they also do not desire to file any cross-objections.

2. The First Appeal arises out of the judgment and award dated 21st April 2005 passed by the learned Civil Judge, Senior Division, Panvel in a Reference under sub-section (3) of section 28A of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act"). The acquisition relates to the land bearing Survey No.92 admeasuring 7400 sq.meter at village Targhar, Taluka Panvel, District Raigad. The said land was notified for acquisition by a Notification issued under section 4 of the said Act dated 3rd February 1970. The land was notified for the public purpose of new Bombay Project. An Award was passed on 4th November 1985 by which market value at the rate of Rs.7/- per sq.meter was offered to the Respondents. The Respondents applied for re-determination of compensation on the basis of an award made in respect of a land from the same village which was notified for acquisition under the same notification. The Special Land Acquistiion Officer fixed the market value at the rate of Rs.7/- per sq.meter. By the impugned Judgment and Award made in a reference under section 28A-3 of the said Act, the market value of the land has been fixed at Rs.15/- per sq.meter. The learned trial Judge has based his findings on a decision of this Court in First Appeals Nos.111 and 112 of 1996.

3. The learned A.G.P. appearing for the Appellant submitted that considering the location of the acquired land and the fact that it is situated at a distance of 8 kms. from Bombay Pune Highway, rate of Rs.15/- per sq.meter awarded by the trial Court is extremely on the higher side. He submitted that the learned trial Judge has not made any deduction on account of development charges. The learned Advocate for the Claimants placed reliance of a decision of this Court dated 18th December 2003 in First Appeal No. 111 of 1996 and other connected First Appeals (Smt.Yamunabai Dhavji Naik v/s. State of Maharashtra) He submitted that in case of a similarly situated land this Court has fixed the market value at the rate of Rs.15/- per sq.meter and therefore, the learned trial Judge was justified in fixing the market value at the rate of Rs.15/- per sq.meter. He, therefore, submitted that no interference was called for.

4. I have carefully considered the submissions. The learned trial Judge has referred to the evidence of one Shri Vikrant Manohar Vaidya, a valuer. After referring to the evidence of the said valuer and the report submitted by him, the learned trial Judge recorded a finding that the acquired land was situated near Gaothan and at the time of acquisition, the facility of electricity and water supply was available

in the vicinity of the acquired land.

5. It will be necessary to refer to the decision of this Court in the case of Smt.Yamunabai Dhavji Naik (supra). It is not in dispute that this Court was dealing with the Appeals arising out of an Award made under section 18 of the said Act relating to acquisition of a land at the same village Targhar which was notified by the notification dated 3rd February 1970 for the same public purpose. This Court was dealing with the Awards where the rate fixed by the Reference Court was at Rs.8/- per sq.meter. After considering the evidence on record and after considering the various decisions of this Court, a finding was recorded that the market value of the acquired land at village Targhar would be Rs.17/- per sq.meter. In view of the decision of this Court in the case of Nama Padu Hudar and others v/s. State of Maharashtra (1993(3) BCR page 54), this Court held that comparative remoteness of village Targhar will not be significant as the lands are being acquired for a single metro project. the learned Single Judge made a deduction of Rs.2/- per sq.meter for development charges and fixed the market value at Rs.15/- per sq.meter. There is nothing on record to show that the said decision has been challenged either by the State Government or by the acquiring body.

6. There is no reason why the said decision should not be applied to the case in and. For determination of the market value of the land subject matter of the present Appeal, the decision of this Court is certainly relevant. Though the learned trial Judge has held that the market value is Rs.15/- per sq.meter without specifically referring to any development charges, the rate of Rs.15/-per sq.meter determined by this Court in the aforesaid decision is after making an allowance for development charges. Therefore, no fault can be found with the view taken by the learned trial Judge that the market value of the acquired land was Rs.15/- per sq.meter. There is no dispute about the grant of statutory benefits under the said Act.

7. There is no merit in the Appeal and the same is dismissed with no order as to costs.

**Judge.**